

Paper I – Principles of International Taxation

19 candidates sat this examination, Each candidate, as required, answered four questions, although, in some instances (especially in relation to question 2, transfer pricing) the answers were incomplete.

Answers were forthcoming on each of the seven questions on the examination paper. The most popular question was question 5 (permanent establishments), which attracted 16 answers. This was followed closely by questions 1 (double taxation agreements) and 7 (controlled foreign corporations), which were answered by 15 and 13 candidates respectively. The least popular question was question 4 (harmful tax competition), which was answered by 5 candidates.

Bearing in mind that this was the first cohort of candidates taking this examination, the quality of the scripts was, on the whole, encouraging. The majority of the answers to question 3 (non-enforcement of foreign tax claims) were impressive, and many of the answers to question 1 (double taxation agreements) were of a good standard. There were, however, some disappointments - most noticeably, the generally rather ordinary answers to question 4 (harmful tax competition) and question 6 (treaty shopping). It was also evident that the weaker candidates struggled, in particular, with question 7 (controlled foreign corporations). Further, it was clear that some candidates could not sustain a consistent and high standard of performance throughout the examination.

Paper II – Advanced International Taxation

Questions 1 to 3

The general standard of the answers to questions 1, 2 and 3 were slightly disappointing. Specifically certain issues I expected to be well known (and which are important UK international tax issues) were overlooked, which were:

CFCs: it is possible to obtain a motive test clearance for all CFCs acquired from a non-UK third party for two accounting periods (which is in the Revenue CFC guidance notes and is a well known fact). Despite the specific question asking for whether the CFC position changed between two years (one of which would have been covered by motive and the other not), none of the candidates for this question picked this fact up, which was disappointing.

DTR: No candidate who tried this question seemed to understand the restructuring options available for the foreign holding company, despite this being pretty much the main UK international tax issue all UK groups have had to grapple with over the last three years.

Some candidates did not attempt part of one question which is again disappointing as this meant they automatically lost all the marks for that particular section.

On a positive note, the entity classification part of question 3 was very well answered by most of the candidates who attempted this question. This may imply that the candidates are better at general principles of UK international tax, rather than the more specific areas of the CFC and DTR law (although to be fair the latter two are specified as level 3 subjects and candidates should therefore have detailed knowledge).

Questions 4 to 7

General

As this was the first time that this paper had been set, the candidates were perhaps at a bit of a disadvantage in that, although specimen papers had been made available, they could not be sure of the level of expertise required. With a relatively small number of candidates, it is not easy to generalise about the standard but the examiner thought it generally competent without showing any sign of brilliance and this was reflected in marks which were normally a little above the pass level.

Question 4

The first part of this question was fairly basic, requiring the candidates to outline their knowledge of the residence rules for individuals and trustees. One suspects that few candidates have come across trustees in practice and little seemed to be known about them. In general, those who answered the question showed a sound knowledge of individual residence. This did, however, change with the other parts of the question. Knowledge of the capital gains liability of non-resident individuals was not well understood and the examiner concluded that the entertainers and sportsmen rules, admittedly not a core topic, were not generally something of which candidates had practical experience. It is suspected that the third part did put some candidates off answering a question in which the examiner thought there were eighteen reasonably straightforward marks.

Question 5

The first part should have been well done as it was readily available from the permitted material; in general those who attempted it were able to give a largely correct answer. Answers to the second part were generally thin but correct in so far as they went and most candidates made good relevant points in dealing with the third part.

Question 6

All candidates must surely have expected a transfer pricing question and the examiner thought that everyone would answer this as it covered a broad range of intra-group transactions and required some comment on the various methods of arriving at an arm's length price. The danger was that candidates would waffle and say all they knew about transfer pricing rather than concentrate on the question posed; not everyone avoided this. The relevant transactions were generally properly identified and sensible pricing suggestions were made. There were five marks available for a brief discussion of Advanced Pricing Agreements and most of these were obtained by those who tried it.

Question 7

This was an unpopular question, which the examiner found slightly surprising (maybe candidates were put off by the VAT element). The major part of it gave an ample opportunity for candidates to discuss a wide range of business start up issues with an international flavour and to show their knowledge of the UK taxation of expatriate employees. As well as matters covered in the marking schedule, there was ample scope to raise other practical issues. The limited number of attempts at the question produced answers which lacked much breadth or depth and ignored the direction to refer to the US/UK double taxation convention. The six marks available for the VAT add-on required some knowledge of UK VAT as well as the reverse charge mechanism and the basic point, that there will be unrelieved input tax, did seem to be within the understanding of those who tried the question.

Paper III, Option B – Principles of Corporate and International Taxation – European Community Option

Firstly I was reasonably pleased with the scripts, although the handwriting of some of the candidates makes me wonder if we should provide them with laptops!

The good news:

- 1) All candidates showed a reasonable understanding of the issues.
- 2) One or two candidates managed to recognise the specific tax cases I chose to base the problem tax cases on.
- 3) I managed to decipher almost all of the extremely poor handwriting but consider that candidates need to make more effort in this area in the future.

The bad news:

- 1) Few candidates picked up easy marks for directly answering the question. Most tried to score points without structuring their answers, without really answering the question posed, without advising their client and rarely offering an Opinion when asked to give one.
- 2) A number of candidates trotted out standard lecture material without weighing up the relevance of the material to the questions posed,
- 3) Candidates who failed to write their answer in Opinion format, or Memorandum format, missed easy marks for simple layout of their answer.

Overall comment

The "specimen paper" should have given all candidates a reasonably good idea of what to expect. One or two candidates clearly picked up on reading recent case law.

"Answering the question which is asked" should be more of a focus.

Time does not appear to have been a factor. All candidates appeared to have sufficient time.

Overall, I was pleased with the standards of the scripts.